

APPEAL NO. 032885  
FILED DECEMBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 24, 2003, and September 23, 2003, with the record closing on October 2, 2003. The hearing officer determined that the respondent (claimant) did not sustain an injury while in the course and scope of his employment on \_\_\_\_\_; that the appellant (carrier) waived the right to contest compensability of the claimed injury by not timely contesting it in accordance with Sections 409.021 and 409.022; that as a result of the waiver of the right to contest compensability, the claimant's injury became compensable as a matter of law; and that the claimant had disability from September 19, 2002, through the date of the hearing. The carrier appeals the waiver determination and its resulting effect on compensability and disability. The appeal file contains no response from the claimant.

DECISION

Reversed and remanded.

Section 409.021 provides, in pertinent part, that for injuries occurring prior to September 1, 2003, an insurance carrier shall, not later than the seventh day after the receipt of written notice of an injury, begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission and the employee in writing of its refusal to pay benefits. In Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), the Supreme Court held that the failure of a carrier to comply with the pay or dispute provision resulted in the carrier waiving its right to contest compensability. A notice of injury, for the purposes of starting the time period for contesting compensability, must be written and must fairly inform the carrier of the name of the injured employee, the identity of the employer, the approximate date of injury, and information which asserts that the injury is work related. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.1(a) (Rule 124.1(a)). The evidence reflects, and the carrier does not dispute, that it first received written notice of the injury on September 23, 2002, and filed its dispute on October 21, 2002.

The carrier argues that our decision in Texas Workers' Compensation Commission Appeal No. 961993, decided November 21, 1996, precludes a finding that it waived the right to contest compensability of the claimed injury. In Appeal No. 961993, it was undisputed that the claimant filed his claim for compensation using a name other than his own. The Appeals Panel held that "written notice of injury to a carrier must, at a minimum, include the correct name of the claimant and, without this, the written notice is legally insufficient to trigger [the waiver provisions]." Although in the present case the claimant did not concede that he was Mr. M, and, in fact, confirmed that he was indeed Mr. M, the carrier presented evidence purporting to show that the claimant is not Mr. M, the name provided in the written notice of injury to the carrier, and

is actually a different person. Despite the dispute surrounding the claimant's identity, the hearing officer made no findings on this issue. Because it is essential that the issue involving the claimant's identity be resolved in order to determine if the carrier waived the right to dispute compensability of the claimed injury, we remand for the hearing officer to make such findings. As all of the disputed issues in this case turn on the waiver issue, the compensability and disability issues are remanded as well. The hearing officer should issue a new decision and order based on the evidence previously presented.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY, A DIVISION OF ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**LEO MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge